

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

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In the Matter of )  
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Tronox Limited )  
 )  
 a corporation, )  
 )  
National Industrialization Company )  
(TASNEE) )  
 )  
 a corporation, )  
 )  
National Titanium Dioxide Company )  
Limited (Cristal) )  
 )  
 a corporation, )  
 )  
and )  
 )  
Cristal USA Inc. )  
 )  
 a corporation. )  
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DOCKET NO. 9377

**NON-PARTY RPM INTERNATIONAL INC.'S MOTION  
AND SUPPORTING MEMORANDUM FOR *IN CAMERA* TREATMENT**

**I. INTRODUCTION**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 345(b), non-party RPM International Inc. ("RPM") respectfully moves this Court for *in camera* treatment of the following documents:

(1) highly confidential, competitively-sensitive business records of RPM, produced to the parties pursuant to subpoenas *duces tecum* served on RPM by the Federal Trade Commission and Respondents;

(2) highly confidential, competitively-sensitive non-business documents that RPM specially prepared and initially produced to the Federal Trade Commission pursuant to a Civil Investigative Demand (“CID”), and then later produced to the parties pursuant to their respective subpoena *duces tecum* (“Confidential Documents”);

(3) highly confidential, competitively sensitive testimony of Rust-Oleum’s vice president of purchasing pursuant to an Investigative Hearing (“IH”) conducted by the Federal Trade Commission on September 18, 2017 (“IH Testimony”); and

(4) highly confidential, competitively sensitive testimony of Rust-Oleum’s vice president of purchasing pursuant to a deposition conducted by the parties on March 9, 2018 (“Deposition Testimony”).

Collectively, in this Motion, each of these four categories of documents will be referred to as “Confidential Materials.” RPM produced these Confidential Materials, among other confidential and commercially sensitive documents, pursuant to either a CID and/or third-party subpoenas. All of these Confidential Materials are presently covered under the Protective Order entered by this Court in the above-captioned matter.

In addition, RPM also seeks *in camera* treatment for anticipated trial testimony that may be provided by any current or former RPM employee, or any current or former employee of an RPM subsidiary company, related to any of the documents or testimony for which *in camera* treatment is sought and granted.

In a letter dated April 19, 2018, the Federal Trade Commission notified RPM that it intends to introduce six Confidential Documents, Confidential IH Testimony, and Confidential Deposition Testimony. See attached Exhibit 20.

In a letter dated April 19, 2008, Respondents – Tronox Limited and National Industrialization Company (TASNEE) (collectively “Tronox”) and National Titanium Dioxide Company Limited (Cristal) and Cristal USA Inc. (collectively “Cristal”) – notified RPM that they

intend to introduce at trial 10 Confidential Documents, Confidential IH Testimony, and Confidential Deposition Testimony. See attached Exhibit 21.

The Federal Trade Commission has advised the undersigned counsel that the government does not object to this Motion.<sup>1</sup> Similarly, counsel for Respondents has advised the undersigned counsel that Respondents have no objection to this Motion.<sup>2</sup>

## II. SUMMARY ARGUMENT

RPM is a non-party – a bystander to the instant action between the government and two manufacturers of titanium dioxide. RPM buys TiO<sub>2</sub> from Cristal. RPM does not buy TiO<sub>2</sub> from Tronox, but RPM does solicit and buy TiO<sub>2</sub> from other horizontal competitors of Cristal and Tronox.

All of the Confidential Materials for which RPM seeks *in camera* treatment are confidential and competitively sensitive (1) RPM business records, (2) RPM non-business records (i.e., summaries) prepared and produced initially to the Federal Trade Commission in response to a CID, (3) IH Testimony, or (4) Deposition Testimony. Most (if not all) of the Confidential Materials the parties have identified for use at trial qualify as trade secrets. See, e.g., 18 U.S.C. § 1839(3) (defining trade secret). These Confidential Materials include documents and testimony showing or related to current and prospective contracts, prices, purchases, supply chain, raw material capacity, specific TiO<sub>2</sub> manufacturers, etc. All of this information is proprietary and specific to RPM. All of it is closely guarded within RPM. None of it is made publicly available.

RPM's Motion for *in camera* treatment is fully supported by the attached Declaration of Steve Mr. DeCastro. Mr. DeCastro is the Vice President of Purchasing for Rust-Oleum, a subsidiary of RPM. In that capacity, Mr. DeCastro is the corporate official who, on behalf of RPM, is directly responsible for negotiating the raw material contracts, including negotiating price and

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<sup>1</sup> This was communicated telephonically to RPM's counsel, Richard T. Hamilton, Jr., by Joonsuk Lee, counsel for the Federal Trade Commission, on April 26, 2018.

<sup>2</sup> This was communicated by email to RPM's counsel, Mr. Hamilton, by Respondents' counsel, Seth Weiner, on April 27, 2018. In return, RPM agreed not to object to any *in camera* Motion filed by Respondents in this proceeding.

supply, with TiO<sub>2</sub> manufacturers. DeCastro Declaration, at ¶ 6. In addition to RPM's records, RPM also seeks *in camera* treatment for redacted portions of Mr. DeCastro's IH Testimony and Deposition Testimony. DeCastro Declaration, ¶¶ 31-35. RPM also seeks *in camera* treatment for any anticipated trial testimony of current or former RPM employees, or of any subsidiary company of RPM, that relates in any way to the information contained in the Confidential Materials.

Furthermore, as provided in the Mr. DeCastro's Declaration, the Confidential Materials are sufficiently secret and sufficiently material to the conduct of RPM's business, such that public disclosure would result in serious competitive injury. DeCastro Declaration, ¶¶ 8-9. *See, e.g., In the Matter of 1-800 Contacts, Inc.*, 2017 WL 1345290 (F.T.C.) (April 4, 2017). *See also* 16 C.F.R. 345(b).

In substance, all of the Confidential Materials for which RPM seeks *in camera* treatment show, refer to, or directly relate to: RPM's current (or near current) TiO<sub>2</sub> pricing; RPM's current contracts with TiO<sub>2</sub> manufacturers; RPM's current TiO<sub>2</sub> supply (i.e., volume of TiO<sub>2</sub>) and suppliers, both actual and prospective; RPM's current purchasing, negotiation, and pricing methods and strategies used in buying TiO<sub>2</sub>; RPM's current and prospective marketing goals and analyses; and RPM's future forecasts, projections, and business opportunities related to RPM's (and its subsidiaries') purchase of TiO<sub>2</sub> from various manufacturers. RPM would be competitively harmed if confidential information related to its current and future TiO<sub>2</sub> prices and supply contracts – and marketing analyses and competitive strategies related to same – were to become publicly available.

Like any rational competitor, RPM has no interest in having its competitors, or its suppliers, or its customers, know its input costs and contractual commitments, or how it goes about negotiating these with TiO<sub>2</sub> manufacturers. Nor does RPM have any interest in publicly disclosing how it qualifies its products for input or output purposes. Moreover, public disclosure would not just cause current competitive harm for RPM, but future competitive harm. That's an unfair and

unreasonable result for a non-party like RPM that has been dragged into a fight between the government and the number two and three TiO2 manufacturers who want to merge.

Accordingly, RPM requests permanent *in camera* treatment of the Confidential Materials. Mr. DeCastro's IH Testimony and Deposition Testimony have been redacted to allow public disclosure of some information which poses no threat of serious competitive injury to RPM. In the alternative, based on the unusualness of the industry and the sensitivity of the documents for which *in camera* treatment is sought, RPM seeks *in camera* treatment for at least 10 years with respect to all Confidential Materials. DeCastro Declaration, ¶¶ 9, 35-38.

RPM also requests *in camera* treatment for any anticipated trial testimony that may be provided by a current or former employee of RPM, or by a current or former employee of a subsidiary company of RPM, if that trial testimony relates to the Confidential Materials. This Court crafted an appropriate procedure for handling in-court trial testimony and the introduction of materials for which *in camera* treatment has been granted. *North Texas Specialty Physicians*, 2004 WL 1571167 (F.T.C.) (April 23, 2004), at \* 8 (Order on non-parties' motions for *in camera* treatment).<sup>3</sup>

### III. LEGAL ARGUMENT

#### A. LEGAL STANDARD FOR IN CAMERA TREATMENT OF CONFIDENTIAL MATERIALS

Courts generally attempt "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). "There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *Id.* at 1184.

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<sup>3</sup> The procedure outlined by this Court in *North Texas Specialty Physicians, supra*, at \* 8, is as follows: "At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such document and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such document, and request that the hearing go into *in camera* session." *Id.*

*In camera* treatment of confidential and commercially sensitive materials is appropriate when “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment. . . .” 16 C.F.R. 3.45(b). See *In the Matter of Jerk, LLC*, et. al., Order on Motion for *In Camera* Treatment (F.T.C. Docket No. 9361) (Feb. 23, 2015), citing *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984), quoting *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

The applicant seeking *in camera* treatment must “make a clear showing that the information concerned is sufficiently material to their business that disclosure would result in serious competitive injury. . . .” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). An affidavit or declaration is required to sustain this burden. See *In re Matter of North Texas Specialty Physicians*, *supra*, at \*2 (Order on Non-Parties’ Motion). Though there is a presumption that information that is more than three years old should not be granted *in camera* treatment, this presumption can be overcome by an affidavit or declaration that the information is still competitively sensitive. *Id.* at \*1. Here, in the instant case, nearly all of RPM’s Confidential Materials concern documents dated in 2017 and testimony concerning current price and related information. Copies of all materials for which *in camera* treatment is sought, including deposition testimony identified by page and line, must be provided to the court for its review. *Id.*

Indefinite *in camera* treatment is granted only in those “unusual” situations where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. See *North Texas Specialty Physicians*, *supra*, at \*1, citing *E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981). Examples include trade secrets (e.g., secret formulas, processes, and technical information) and privileged information. *H.P. Hood & Sons*, *supra*, at 1189.

Where ordinary business records are involved, in contrast to trade secrets or privileged information, the Federal Trade Commission typically limits *in camera* treatment to two

to five years. See *North Texas Specialty Physicians, supra*, at \*1, citing *E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981).

In evaluating both secrecy and materiality, the court may consider the following factors: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with the information could be acquired or duplicated by others. *In re Bristol Co.*, 90 F.T.C. 455, 456-457 (1977).

The Federal Trade Commission has recognized that *in camera* treatment is appropriate for certain business records, such as business strategies, marketing plans, pricing policies, and sales documents. See, e.g., *Kaiser Alum., supra*, at 500; *H.P. Hood & Sons, supra*, at 1188-1189.

In seeking *in camera* treatment, a party's status matters. The Federal Trade Commission has held that, "[t]here can be no question that the confidential records of businesses involved in commission proceedings should be protected insofar as possible." *Hood & Sons*, 58 F.T.C. at 1186. This is especially so with a third party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential information. *In re Kaiser Alum.*, 103 F.T.C. at 500 ("as a matter of policy, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative requests."). RPM is a third-party bystander in the instant action.

**B. THE CONFIDENTIAL MATERIALS FOR WHICH RPM SEEKS *IN CAMERA* TREATMENT**

**1. Confidential Materials Identified By The Federal Trade Commission For Use At Trial**

RPM seeks *in camera treatment* for all of the following documents and testimony that the Federal Trade Commission identified for use at trial:

Exhibit Number	Description	Date	Beginning Bates	End Bates
PX400	Letter to Mr. Lee of the FTC re CID	8/3/2017	PX4000-001	PX40000-028
PX4005	Email to Mr. DeCastro	4/4/2017	RPM_Subpoena_0000246	RPM_Subpoena_0000251
PX4006	Email from Mr. DeCastro re TiO2 news	5/10/2017	RPM_Subpoena_0000708	RPM_Subpoena_0000709
PX4007	Email to Mr. DeCastro re TiO2 price increase	6/7/2017	RPM_Subpoena_0000754	RPM_Subpoena_0000755
PX4008	Email from Mr. DeCastro re TiO2 price increase	6/26/2017	RPM_Subpoena_0000783	RPM_Subpoena_0000783
PX4016	TiO2 Presentation at RPM' NAST meeting	6/15/2017	RPM_Subpoena_0004815	RPM_Subpoena_0004820
PX7003	Transcript: Mr. DeCastro's IH testimony	9/18/2017	PX7003-001	PX7003-019
PX7016	Transcript: Mr. DeCastro's Deposition	3/9/2018	PX7016-001	PX7016-053

**2. Confidential Materials Identified By Cristal For Use At Trial**

RPM also seeks *in camera treatment* for all of the following documents and testimony that Respondents identified for use at trial:

Exhibit Number	Description	Date	Beginning Bates	End Bates
RX0648		6/30/2017 to 7/12/2017	RPM_Subpoena_0000794	RPM_Subpoena_0000795
RX0745	Email to Mr. DeCastro re TiO2 prices	9/30/2017	RPM_Subpoena_0001168	RPM_Subpoena_0001170
RX0649	Email string involving Mr. DeCastro re TiO2 pricing and supply	9/21/2017 to 9/22/2017	RPM_Subpoena_0001251	RPM_Subpoena_0001253
RX0650	RPM market update re current and projected TiO2 supply and prices	9/15/2017	RPM_Subpoena_0001321	RPM_Subpoena_0001321
RX0651	Email string involving Mr. DeCastro re current and projected TiO2 supply and prices	9/27.2017 to 9/29.2017	RPM_Subpoena_0001357	RPM_Subpoena_0001360
RX0652	Email to Mr. DeCastro re price and supply of TiO2	10/5/2017	RPM_Subpoena_0001419	RPM_Subpoena_0001419
RX0746	RPM Monthly Market Report re TiO2 prices and supply	10/2017	RPM_Subpoena_0001469	RPM_Subpoena_0001469
RX0649	Emails to Mr. DeCastro re order confirmation from TiO2 manufacturer	10/22/2017 to 10/24/2017	RPM_Subpoena_0001541	RPM_Subpoena_0001541
RX0654	RPM sales contract and related information re RPM purchase of TiO2 (Untranslated)	10/22/2017	RPM_Subpoena_0001542	RPM_Subpoena_0001557
RX0747	Email string involving Mr.	3/22/2017 to 4/4/2017	RPM_Subpoena_0004391	RPM_Subpoena_0004395

	DeCastro re TiO2 purchases			
RX0748	RPM market survey of price trends related to several products including TiO2	Oct and Nov 2018	RPM_Subpoena_0004696	RPM_Subpoena_0004696
(See also PX400)	Letter from RPM's counsel to the FTC pursuant to CID	8/3/2017		
RX0149 (See also PX7003)	Transcript: Mr. DeCastro's IH testimony plus accompanying exhibits	9/18/2017		
RX 0183 (See also PX7016)	Transcript: Mr. DeCastro's Deposition testimony plus accompanying exhibits	3/9/2018		

C. **IN CAMERA TREATMENT IS APPROPRIATE FOR RPM'S CONFIDENTIAL MATERIALS**

1. **RPM'S Confidential Materials Are Secret And Material To RPM'S Business Such That Disclosure Would Result In Serious Injury To RPM**

As detailed in the attached Declaration of Steve DeCastro, the Confidential Materials that the Federal Trade Commission and Respondents seek to introduce at trial are both secret and material to RPM's business. DeCastro Declaration, ¶¶ 7-10. See *In re General Foods, supra*, at 355. The materials for which RPM seeks *in camera* treatment are not widely distributed within RPM's business, are not disclosed publicly, and are maintained in strict confidence by those at RPM with access to this information. DeCastro Declaration, ¶¶ 8, 14.

The Confidential Materials fall into four categories. DeCastro Declaration, ¶ 5. In each case, these Confidential Materials contain information of great competitive significance to RPM. In sum, these Confidential Materials contain information related to RPM's supply contracts

with TiO2 manufacturers, current and future pricing, contract terms and purchase commitments, market analyses related to TiO2, market forecasts and projections, RPM's product mix and qualifying process, competitive strategies in this industry, etc. DeCastro Declaration, ¶¶ 8-9.

a. **RPM's Secret and Material Business Documents**

Both the Federal Trade Commission and Respondents seek to introduce at trial Confidential Materials consisting of competitively sensitive business records of RPM. DeCastro Declaration, ¶¶ 19-35.

The government seeks to introduce PX4005, PX4006, PX4007, PX4008, and PX4016. DeCastro Declaration, ¶ 10. Each of these documents is an RPM business record. *Id.* at ¶¶ 12-18. Each document is an internal RPM email involving Mr. DeCastro related to TiO2 pricing and RPM's analysis of the TiO2 market. *Id.* Each document is dated in 2017 and shows or relates to current or future TiO2 pricing and supply. *Id.* Each document is intended to be secret, and the information contained therein is not for public disclosure. *Id.*

Respondents seek to introduce at trial RX0648, RX0745, RX0649, RX0650, RX0651, RX0652, RX0746, RX0649, RX0654, RX0747, and RX0748. DeCastro Declaration, ¶ 11. Each of these documents is a confidential internal business record of RPM. *Id.* at ¶¶ 19-30. These documents consist of internal RPM emails, internal marketing analyses, or internal purchasing strategies. *Id.* All relate to RPM's current TiO2 pricing and supply. *Id.* Each document is dated in 2017. *Id.*

b. **RPM's letter and accompanying records initially produced to the Federal Trade Commission pursuant to a CID are appropriate for *in camera* treatment**

Both the Federal Trade Commission and Respondents seek to introduce at trial Confidential Materials initially produced to the Federal Trade Commission on or about August 3, 2017, namely, PX4000-001 to PX4000-028. DeCastro Declaration, ¶¶ 10 and 11.

These Confidential Materials consist of the following:

(1) a letter from RPM's counsel responding to the CID served on RPM by the Federal Trade Commission (PX4000-0001 to PX4000-0004), *see* DeCastro Declaration, ¶ 12;

(2) a summary prepared by RPM in response to the CID showing RPM's TiO<sub>2</sub> purchases in the United States by specific manufacturer, tonnage, and dollar amount for the years 2014, 2015, 2016, and 2017 (PX4005-0005 to PX4005-006), *see* DeCastro Declaration, ¶ 12;

(3) a summary prepared by RPM in response to the CID showing RPM's European TiO<sub>2</sub> purchases by specific manufacturer, tonnage, and dollar amount for the years 2014, 2015, 2016, and 2017 (PX4000-007), *see* DeCastro Declaration, ¶ 12;

(4) a summary prepared by RPM in response to the CID showing RPM's acquisitions of companies since 2014 which use TiO<sub>2</sub> (PX4000-008), *see* DeCastro Declaration, ¶ 12; and

(5) price increase letters or communications from TiO<sub>2</sub> manufacturers dated from December 2015 through August of 2017 (PX4000-009 to PX4000-028), *see* DeCastro Declaration, ¶ 12.

As detailed in the Declaration of Steve DeCastro, the above documents are secret, material to RPM's business, and public disclosure would result in a clearly defined injury to RPM. DeCastro Declaration, ¶¶ 12-13. None of this information is known outside of RPM. *Id.* All of this information, which is granular in nature, is proprietary to RPM. *Id.* All of this information is competitively sensitive. DeCastro Declaration, ¶¶ 12-18.

c. **The IH Testimony of Steve DeCastro is appropriate for *in camera* treatment**

Pursuant to a CID, Steve DeCastro provided testimony to the Federal Trade Commission in an Investigative Hearing. *See* PX7003; RX0813. DeCastro Declaration, ¶¶ 31-32. Both the Federal Trade Commission and Respondents have notified RPM of their intent to introduce this testimony at trial. DeCastro Declaration, ¶¶ 10-11; 31-32.

During the IH Hearing, the government's questions and Mr. DeCastro's answers pertained nearly exclusively to the information contained in the summaries provided in PX4000-

001 to PX4000-028. DeCastro Declaration, ¶¶ 32. Indeed, Mr. DeCastro spent nearly all of the IH Hearing confirming the price, quantity, and dollar amount figures previously provided in PX4000-0005 to PX4000-008, with a small amount of additional testimony related to price increase letters and communications from various TiO2 manufacturers from December 2015 through August 2017. *Id.* Accordingly, for the same reasons discussed above explaining why the underlying documents are material to RPM's business, competitively sensitive, and would result in a clearly defined injury to RPM, all of Mr. DeCastro's IH testimony should be accorded *in camera* treatment. *Id.* at ¶¶ 31-32.

Here, RPM does not seek to exclude the entire transcript of Mr. DeCastro's IH Testimony. DeCastro Declaration, ¶32. Rather, RPM has proposed a redacted transcript. See attached RPM Exhibit 1-A. This redacted transcript seeks *in camera* treatment for only the most sensitive competitive information that, if publicly disclosed, will result in a serious competitive injury to RPM. *Id.*

**d. The Deposition Testimony of Steve DeCastro is appropriate for *in camera* treatment**

Pursuant to subpoenas *ad testificandum* served on RPM requiring a corporate representative to testify on a variety of topics, and pursuant to subpoenas *ad testificandum* served on Steve DeCastro individually, Mr. DeCastro provided extensive testimony about RPM's current and prospective pricing, competitive strategies, and current and future tactics related to negotiating and purchasing TiO2. His testimony also included RPM's assessment of capacity, output, and trends in the TiO2 market. See PX7016; RX0149. See also DeCastro Declaration, ¶¶ 33-35. Mr. DeCastro further testified about specific documents related to RPM's purchase of TiO2. *Id.* All such documents were internally created by and for RPM officers and employees. *Id.*

As is apparent from the testimony itself, the information about which Steve DeCastro testified, including the underlying documents, is proprietary, highly confidential, and commercially and competitively sensitive. DeCastro Declaration, ¶¶ 33-35. The information contained in this testimony (and in the underlying exhibits used in the deposition) reveals RPM's

competitive edge in the market place in terms of RPM's TiO<sub>2</sub> buying practices. This information also reveals RPM's product mix, including its internal qualifying methods and approval standards for the products that RPM makes and sells downstream to its customers. DeCastro Declaration, ¶ 35.

Accordingly, RPM has combed the Deposition Testimony and redacted only such information as is necessary to protect RPM's commercial interests and avoid serious competitive injury. DeCastro Declaration, ¶ 34. This redacted testimony concerns highly confidential and proprietary information that is commercially and competitively sensitive to RPM's business, and, if publicly disclosed, would result in a clearly defined, serious injury. *Id.* at ¶¶ 33-35.

2. **RPM Took Appropriate Steps To Maintain The Secrecy Of The Confidential Materials**

Here, RPM took appropriate steps to keep the Confidential Materials secret. At all times, when RPM produced the Confidential Materials to the parties, RPM marked them as "Confidential – FTC Docket No. 9377." In addition, when produced to the parties under subpoena in connection with the above-captioned matter, RPM did so knowing the materials would be satisfactorily protected under this Court's Protective Order, which strictly limits access to RPM's materials.

Moreover, as detailed in Steve DeCastro's Declaration, the information contained in the Confidential Materials is closely guarded and treated within RPM with great caution. DeCastro Declaration, ¶¶ 8, 9, 12-30. This information, and what RPM does with it, is not available to the public. *Id.* RPM does not make publicly available the prices, terms, and conditions of its TiO<sub>2</sub> purchases. *Id.* Nor does RPM make publicly available its supply contracts with TiO<sub>2</sub> manufacturers. *Id.* Nor does RPM make publicly available its negotiating tactics and competitive strategies, or its analyses of the TiO<sub>2</sub> market. *Id.* To do so would significantly compromise RPM's commercial and competitive best interests, resulting in injury to RPM. *Id.*

3. **Public Disclosure Of The Confidential Materials Would Result In A Loss Of Business Advantage**

As further detailed in the Steve DeCastro's Declaration, public disclosure of the Confidential Materials will result in the loss of a business advantage to RPM. DeCastro Declaration, ¶¶ 8-9, 13-35. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999) (The likely loss of business advantage is a good example of a clearly defined, serious injury.). Here, the Confidential Materials have a consistent and dominant theme: These materials show, refer to, or relate to RPM's pricing, terms, conditions, and competitive strategies regarding its purchase of TiO<sub>2</sub>. The Confidential Materials are not historic in nature, but rather reveal and relate to *current and future* pricing and output. This makes RPM even more susceptible to competitive injury if this Court permits public disclosure.

RPM's main use of TiO<sub>2</sub> involves its subsidiaries' coatings business. Public disclosure would place RPM at a serious competitive disadvantage if RPM's competitors (and its downstream customers) learned of RPM's business strategies regarding the purchase of TiO<sub>2</sub>. It would also be injurious to RPM for outsiders to learn about how RPM qualifies its products or RPM's product mix. Frankly, this is proprietary information that is nobody's business but RPM's and is undoubtedly protectable as a trade secret under federal and state law.

RPM's negotiating position and strategies with current and prospective TiO<sub>2</sub> manufacturers would also be significantly impaired if the Confidential Materials were publicly disclosed. As detailed Steve DeCastro's Declaration, the TiO<sub>2</sub> industry is small, with a limited number of TiO<sub>2</sub> manufacturers. DeCastro Declaration, ¶¶ 9, 36-37. TiO<sub>2</sub> capacity itself is limited. *Id.* RPM, probably like most TiO<sub>2</sub> purchasers, tries to leverage its price and tonnage negotiations by playing one TiO<sub>2</sub> manufacturer against the others. It would be competitively harmful to RPM for its current and prospective TiO<sub>2</sub> manufacturers to know the prices RPM pays, the amount it buys, and its reasons and negotiating strategies related to same. *Id.*

4. **Indefinite In Camera Treatment Is Appropriate For RPM'S Confidential Information**

Taken together, there are sufficiently "unusual" circumstances about the Confidential Materials and the TiO<sub>2</sub> industry to make appropriate *in camera* treatment for RPM's Confidential Materials. See, e.g., *North Texas Specialty Physicians, supra*, at \*1, citing *E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981). On the manufacturing end, the TiO<sub>2</sub> industry is highly concentrated, comprised of only a handful of TiO<sub>2</sub> manufacturers. DeCastro Declaration, ¶¶ 9, 36. The high market concentration is unlikely to change, and in fact the industry will become more concentrated if the proposed merger is consummated. *Id.*

On the buying end, as a TiO<sub>2</sub> purchaser, RPM competes in this market against other buyers who need TiO<sub>2</sub> as a raw material input, which itself is comprised of a relatively finite set of TiO<sub>2</sub> buyers. *Id.* RPM's ability to obtain adequate supply of this capacity-limited product is price dependent, which itself is dependent on RPM's internal market analyses and price negotiation strategies. The Confidential Materials, if publicly disclosed, would reveal to outsiders – including RPM's suppliers, competitors, and customers – this commercially and competitively sensitive information, causing serious competitive injury to RPM.

In addition, the recent history of the TiO<sub>2</sub> industry dictates caution regarding public disclosure of RPM's Confidential Materials. DeCastro Declaration, ¶ 37. As publicly reported, several TiO<sub>2</sub> manufacturers (including Respondent Cristal) were sued in a class action lawsuit involving collusion – i.e., price fixing – among TiO<sub>2</sub> manufacturers. *Id.* This federal class action case settled, resulting in the payment of tens of millions of dollars to TiO<sub>2</sub> purchasers (like RPM) by TiO<sub>2</sub> manufacturers. *Id.* Given this recent industry history, involving ripened allegations of horizontal collusion, it makes no sense to allow RPM's highly confidential TiO<sub>2</sub> pricing information, internal negotiating strategies, and internal market analyses, to be publicly disclosed. This is a relatively static industry with few TiO<sub>2</sub> sellers and limited buyers bidding for limited capacity of TiO<sub>2</sub> material. This mature industry is unlikely to change in the foreseeable future, with the

exception of becoming more concentrated on the TiO2 manufacturing end if Respondents' proposed merger is consummated.

**IV. CONCLUSION**

For the foregoing reasons, including the reasons set forth in the Declaration of Steve DeCastro, RPM – a non-party – respectfully requests that this Court impose an Order granting RPM's Motion seeking permanent *in camera* treatment for the Confidential Materials in this Motion. Doing so will avoid clearly defined, serious injury to RPM. In the alternative, because of the nature of this industry, at a minimum, RPM requests that this Court impose an Order granting *in camera* treatment for 10 years. *In camera* treatment for 10 years will sufficiently minimize any potential serious injury to RPM. A proposed Order is attached for this Court's consideration.

Respectfully submitted,

*s/Richard T. Hamilton, Jr.*  
Richard T. Hamilton, Jr.  
Ohio No. 0042399  
ULMER & BERNE LLP  
1660 West 2d Street  
Suite 1100  
Cleveland, OH 44113  
(216) 583-7466/fax (216) 583-7467  
rhamilton@ulmer.com

Counsel for Non-Party RPM International Inc.

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )  
Tronox Limited )  
                  a corporation, )  
National Industrialization Company ) DOCKET NO. 9377  
(TASNEE) )  
                  a corporation, )  
National Titanium Dioxide Company )  
Limited (Cristal) )  
                  a corporation, )  
and )  
Cristal USA Inc. )  
                  a corporation. )  
\_\_\_\_\_ )

**[PROPOSED] ORDER**

This Court, being fully advised of the premises of Non-Party RPM International Inc.'s Motion and Supporting Memorandum for *In Camera* Treatment of Confidential Materials, and in the supporting Declaration of Steve DeCastro, **ORDERS, JUDGES, AND DECREES** that permanent *in camera* treatment is appropriate for RPM's Confidential Materials. Such Confidential Materials, and any testimony provided at the trial of the above-captioned matter, is granted permanent *in camera* treatment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge D. Michael Chapell

Notice of Electronic Service

I hereby certify that on May 01, 2018, I filed an electronic copy of the foregoing Proposed Order, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

I hereby certify that on May 01, 2018, I served via E-Service an electronic copy of the foregoing Proposed Order, upon:

Seth Wiener  
Arnold & Porter Kaye Scholer LLP  
seth.wiener@apks.com  
Respondent

Matthew Shultz  
Arnold & Porter Kaye Scholer LLP  
matthew.shultz@apks.com  
Respondent

Albert Teng  
Arnold & Porter Kaye Scholer LLP  
albert.teng@apks.com  
Respondent

Michael Williams  
Kirkland & Ellis LLP  
michael.williams@kirkland.com  
Respondent

David Zott  
Kirkland & Ellis LLP  
dzott@kirkland.com  
Respondent

Matt Reilly  
Kirkland & Ellis LLP  
matt.reilly@kirkland.com  
Respondent

Andrew Pruitt  
Kirkland & Ellis LLP  
andrew.pruitt@kirkland.com  
Respondent

Susan Davies  
Kirkland & Ellis LLP  
susan.davies@kirkland.com  
Respondent

Michael Becker

Kirkland & Ellis LLP  
mbecker@kirkland.com  
Respondent

Karen McCartan DeSantis  
Kirkland & Ellis LLP  
kdesantis@kirkland.com  
Respondent

Megan Wold  
Kirkland & Ellis LLP  
megan.wold@kirkland.com  
Respondent

Michael DeRita  
Kirkland & Ellis LLP  
michael.derita@kirkland.com  
Respondent

Charles Loughlin  
Attorney  
Federal Trade Commission  
cloughlin@ftc.gov  
Complaint

Cem Akleman  
Attorney  
Federal Trade Commission  
cakleman@ftc.gov  
Complaint

Thomas Brock  
Attorney  
Federal Trade Commission  
TBrock@ftc.gov  
Complaint

Krishna Cerilli  
Attorney  
Federal Trade Commission  
kcerilli@ftc.gov  
Complaint

Steven Dahm  
Attorney  
Federal Trade Commission  
sdahm@ftc.gov  
Complaint

E. Eric Elmore  
Attorney  
Federal Trade Commission  
eelmore@ftc.gov  
Complaint

Sean Hughto  
Attorney  
Federal Trade Commission  
shughto@ftc.gov

Complaint

Joonsuk Lee  
Attorney  
Federal Trade Commission  
jlee4@ftc.gov  
Complaint

Meredith Levert  
Attorney  
Federal Trade Commission  
mlevert@ftc.gov  
Complaint

Jon Nathan  
Attorney  
Federal Trade Commission  
jnathan@ftc.gov  
Complaint

James Rhilinger  
Attorney  
Federal Trade Commission  
jrhilinger@ftc.gov  
Complaint

Blake Risenmay  
Attorney  
Federal Trade Commission  
brisenmay@ftc.gov  
Complaint

Kristian Rogers  
Attorney  
Federal Trade Commission  
krogers@ftc.gov  
Complaint

Z. Lily Rudy  
Attorney  
Federal Trade Commission  
zrudy@ftc.gov  
Complaint

Robert Tovsky  
Attorney  
Federal Trade Commission  
rtovsky@ftc.gov  
Complaint

Dominic Vote  
Attorney  
Federal Trade Commission  
dvote@ftc.gov  
Complaint

Cecelia Waldeck  
Attorney  
Federal Trade Commission

cwaldeck@ftc.gov  
Complaint

Katherine Clemons  
Associate  
Arnold & Porter Kaye Scholer LLP  
katherine.clemons@arnoldporter.com  
Respondent

Eric D. Edmondson  
Attorney  
Federal Trade Commission  
eedmondson@ftc.gov  
Complaint

David Morris  
Attorney  
Federal Trade Commission  
DMORRIS1@ftc.gov  
Complaint

Zachary Avallone  
Kirkland & Ellis LLP  
zachary.avallone@kirkland.com  
Respondent

Rohan Pai  
Attorney  
Federal Trade Commission  
rpai@ftc.gov  
Complaint

Rachel Hansen  
Associate  
Kirkland & Ellis LLP  
rachel.hansen@kirkland.com  
Respondent

Peggy D. Bayer Femenella  
Attorney  
Federal Trade Commission  
pbayer@ftc.gov  
Complaint

Grace Brier  
Kirkland & Ellis LLP  
grace.brier@kirkland.com  
Respondent

**I hereby certify that on May 01, 2018, I served via other means, as provided in 4.4(b) of the foregoing Proposed Order, upon:**

Seth Weiner  
Arnold & Porter Kaye Scholer LLP  
Respondent

Joonsuk Lee  
Title...  
FTC

jlee4@ftc.com  
Complaint

Richard Hamilton  
Attorney

**STATEMENT REGARDING MEET AMD CONFER**

The undersigned counsel for non-party RPM certifies that he notified counsel for the Federal Trade Commission via telephone on or about April 19, 2018, and confirmed via telephone on or about April 27, 2018, that RPM would be seeking *in camera* treatment of the Confidential Materials. The undersigned counsel for RPM also notified Respondents on or about April 27, 2018, that RPM would be seeking *in camera* treatment of the Confidential Materials. Both counsel for the Federal Trade Commission, Joonsuk Lee, and counsel for Respondents, Seth Weiner, indicated that they would not object to RPM's Motion seeking *in camera* treatment for Confidential Materials. Respondent's acquiescence was conditioned on RPM's not objecting to any motion filed on Respondents' behalf seeking *in camera* treatment.

**CERTIFICATE OF SERVICE**

I hereby certify on May 1, 2018, I filed the foregoing Non-Party RPM International Inc.'s Motion and Supporting Memorandum for *In Camera* Treatment and related documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Room H-113  
Washington, D.C. 20580  
Secretary@ftc.gov

I hereby also certify that on May 1, 2018, I caused to be served a true and correct copy of the foregoing documents on the following via electronic email:

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave.  
Room H-110  
Washington, D.C. 20580  
oalj@ftc.gov

Mr. Joonsuk Lee  
Federal Trade Commission  
Bureau of Competition  
400 7<sup>th</sup> Street S.W.  
Washington, D.C. 20024  
jlee4@ftc.com

Mr. Seth Weiner  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave., NW Street,  
Washington, DC 20001-3743  
Seth.weiner@arnoldporter.com

*Counsel Supporting the Complaint*

*Counsel for Respondents*

s/Richard T. Hamilton, Jr.  
Richard T. Hamilton, Jr.  
Counsel for Non-Party RPM International Inc.

**CERTIFICATE OF ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission on May 1, 2018, is a true and correct copy of the paper original that I possess and that a paper original of the signed document is available for review by the parties and the Administrative Law Judge.

Respectfully submitted,

*s/Richard T. Hamilton, Jr.*

Richard T. Hamilton, Jr.

Ohio No. 0042399

ULMER & BERNE LLP

1660 West 2d Street

Suite 1100

Cleveland, OH 44113

(216) 583-7466/fax (216) 583-7467

rhamilton@ulmer.com

Counsel for Non-Party RPM International Inc.

**In the Matter of:**

**Tronox and Cristal**

*September 18, 2017*  
*Stephen DeCastro*

**Condensed Transcript with Word Index**



**For The Record, Inc.**  
**(301) 870-8025 - [www.ftrinc.net](http://www.ftrinc.net) - (800) 921-5555**

**PX7003-001**

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<p>FEDERAL TRADE COMMISSION</p> <p>TRONOX, :  a corporation, :  and : File No. 171-0085  CRISTAL, :  a corporation. :</p> <p>-----</p> <p>Monday, September 18, 2017</p> <p>Room 5103  Federal Trade Commission  400 7th Street, S.W.  Washington, D.C. 20024</p> <p>The above-entitled matter came on for  investigational hearing, pursuant to notice, at  9:21 a.m.</p>	<p>I N D E X</p> <p>WITNESS: PAGE:  STEPHEN DECASTRO  By Ms. Lippincott 4</p> <p>EXHIBITS PAGE:  PX4000 9</p>
2	4
<p>APPEARANCES:</p> <p>ON BEHALF OF THE FEDERAL TRADE COMMISSION:  VICTORIA L. LIPPINCOTT, ESQUIRE  JOONSUK LEE, ESQUIRE  Federal Trade Commission  400 7th Street, S.W.  Washington, D.C. 20204  (202) 326-2983  vlippincott@ftc.gov</p> <p>ON BEHALF OF RPM:  RICHARD T. HAMILTON, JR., ESQUIRE  Ulmer Berne, LLP  1660 West 2nd Street, Suite 1100  Cleveland, Ohio 44113-1448  rhamilton@ulmer.com  and  TRACY D. CRANDALL, ESQUIRE  RPM International, Inc.  2628 Pearl Road  P.O. Box 777  Medina, Ohio 44258  (330) 273-8806  tcrandall@rpminc.com</p>	<p>Thereupon,  Stephen DeCastro,  was called for examination and, after having been  sworn by the notary, was examined and testified  as follows:</p> <p>MS. LIPPINCOTT: This proceeding is  being convened at 9:30 a.m. on Monday,  September 18th, 2017, in the offices of the  Federal Trade Commission at 400 7th Street,  Southwest, in Washington, D.C. My name is  Victoria Lippincott, and I'm an attorney with the  Federal Trade Commission. This proceeding is a  nonpublic investigational hearing held in  furtherance of the Federal Trade Commission's  investigation of Tronox's proposed acquisition of  Cristal.</p> <p>EXAMINATION BY COUNSEL FOR THE FTC  BY MS. LIPPINCOTT:</p> <p>Q Will you, please, state your name for  the record.  A Stephen DeCastro.  Q Mr. DeCastro, have you testified under  oath before?  A Yes.  Q When?</p>

I (Pages 1 to 4)

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PX7003-002

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<p>1 A A number of years ago.</p> <p>2 Q What was it related to?</p> <p>3 A It was related to my role as the</p> <p>4 chairman of the school board where I live.</p> <p>5 Q Have you – have you testified any</p> <p>6 other time under oath?</p> <p>7 A That's the only time I can recall.</p> <p>8 Q Okay. Thank you.</p> <p>9 Before we proceed further, I would</p> <p>10 like to go over some ground rules for today's</p> <p>11 hearing. For the court reporter's benefit and so</p> <p>12 the record is clear, please respond to all</p> <p>13 questions orally. Gestures and nods are not</p> <p>14 recorded, okay?</p> <p>15 A Yes.</p> <p>16 Q I have to remind myself that, too,</p> <p>17 because I'm a big gesture person. In order to</p> <p>18 preserve an accurate transcript, it is important</p> <p>19 that we not speak over each other. Please allow</p> <p>20 me to complete my question before responding, and</p> <p>21 I will likewise do my best not to interrupt your</p> <p>22 responses.</p> <p>23 Is that all right?</p> <p>24 A Yes.</p> <p>25 Q If you do not understand a question,</p>	<p>1 Q Is there anything that may affect your</p> <p>2 ability to give truthful and complete testimony</p> <p>3 today?</p> <p>4 A No.</p> <p>5 Q Mr. DeCastro, I'd like to begin by</p> <p>6 getting a little background information. So this</p> <p>7 should be hopefully relatively easy. Who is your</p> <p>8 current employer?</p> <p>9 A Rust-Oleum Corporation.</p> <p>10 Q And is Rust-Oleum part of a bigger</p> <p>11 organization?</p> <p>12 A Yes.</p> <p>13 Q And what is the name of that</p> <p>14 organization?</p> <p>15 A RPM.</p> <p>16 Q And what is your current position</p> <p>17 with – in Rust-Oleum?</p> <p>18 A Vice-president of purchasing.</p> <p>19 Q And how long have you been the</p> <p>20 vice-president of purchasing for Rust-Oleum?</p> <p>21 A For Rust-Oleum, about 14 years.</p> <p>22 Q And what are your duties and</p> <p>23 responsibilities as vice-president of purchasing?</p> <p>24 A To oversee and negotiate all of the</p> <p>25 chemical purchases that Rust-Oleum would be</p>
6	8
<p>1 please tell me, and I will do my best to rephrase</p> <p>2 it. Under the Commission's rules, you must</p> <p>3 answer the questions I ask truthfully, unless not</p> <p>4 answering is necessary to preserve a claim of</p> <p>5 privilege.</p> <p>6 All right?</p> <p>7 A Yes.</p> <p>8 Q From time to time your counsel may</p> <p>9 object. These objections are for the record for</p> <p>10 a judge to rule on at a later time, if necessary.</p> <p>11 Unless an objection is made for privilege, you</p> <p>12 must answer the question that was asked, okay?</p> <p>13 A Yes.</p> <p>14 Q We'll take periodic breaks during the</p> <p>15 day, but if you need a break, let me know, and I</p> <p>16 will do my best to accommodate you as soon as I</p> <p>17 finish a line of questioning, and hopefully this</p> <p>18 will be short enough we won't require many</p> <p>19 breaks.</p> <p>20 Do you understand the instructions I</p> <p>21 have given you?</p> <p>22 A Yes.</p> <p>23 Q Do you understand that you are under</p> <p>24 oath today?</p> <p>25 A Yes.</p>	<p>1 engaged in.</p> <p>2 Q So as vice-president of purchasing for</p> <p>3 Rust-Oleum, are you involved in Rust-Oleum's</p> <p>4 purchases of titanium dioxide?</p> <p>5 A Yes.</p> <p>6 Q And how do you – in your everyday</p> <p>7 nomenclature, do you refer to it as titanium</p> <p>8 dioxide or TiO<sub>2</sub>, or how do you guys refer to the</p> <p>9 chemical?</p> <p>10 A Mainly TiO<sub>2</sub>.</p> <p>11 Q That's how I'll refer to it then.</p> <p>12 Can you describe, in general, your</p> <p>13 role in Rust-Oleum's purchases of TiO<sub>2</sub>?</p> <p>14 A I'm a lead person that negotiates</p> <p>15 pricing and volume for Rust-Oleum in our other</p> <p>16 RPM companies.</p> <p>17 Q You answered my next question. So you</p> <p>18 do also purchase TiO<sub>2</sub> for RPM companies that are</p> <p>19 not Rust-Oleum?</p> <p>20 A I don't purchase it. I negotiate the</p> <p>21 price and volume.</p> <p>22 Q Okay. Thank you for that</p> <p>23 clarification.</p> <p>24 <b>REDACTED</b></p> <p>25</p>

2 (Pages 5 to 8)

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PX7003-003

<p>9</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>11</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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3 (Pages 9 to 12)

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PX7003-004

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**REDACTED**

10 Q What is slurry TiO2?  
11 A Slurry TiO2 is a pigment that's  
12 disbursed in water so you don't have to grind it.  
13 Q So it's delivered in liquid form?  
14 A Yes.  
15 Q How is it delivered?  
16 A It's delivered -- for us, it's  
17 delivered in tank trucks.  
18 Q Okay. And do you have -- do you put  
19 it right into the production process when you get  
20 it?  
21 A We put it into a storage tank.

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**REDACTED**

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1 you only purchased TiO2 slurry from Cristal?  
2 A Yes.  
3 Q Have you qualified any other suppliers  
4 TiO2 slurry for Rust-Oleum?  
5 A We have in the past.  
6 Q Is anyone qualified today?  
7 A Chemours would be qualified today.  
8 Q And who have you qualified in the  
9 past?  
10 A Kronos.  
11 Q So looking back at 2016 and even I  
12 guess 2014 through 2017, Rust-Oleum purchases  
13 from a number of TiO2 producers. Why do you  
14 purchase TiO2 from -- well, in 2016, why did you  
15 purchase TiO2 from five different suppliers?  
16 A Pricing and contractual obligations.  
17 Q So could Rust-Oleum use just a single  
18 supplier for all of its TiO2 needs?  
19 A Yes.  
20 Q And why do you choose not to do that?  
21 A To try to make sure that there aren't  
22 any supply issues and we're just not buying from  
23 one -- one company.  
24 Q And what's the advantage of -- besides  
25 supply issues, what's the advantage of buying

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Q Are you familiar with the distinction  
between sulfate and chloride grades TiO2?  
A Yes.  
Q How do they differ?  
A They differ in the process of making  
the TiO2. One uses a chlorine gas to take out  
the color of the raw material, and the other one  
uses sulfuric acid.  
Q I don't think I realized it's to take  
the color out.  
A Yes. The feedstock would be pretty  
dark in color, almost black.

**REDACTED**

4 (Pages 13 to 16)

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PX7003-005

<p>17</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>REDACTED</p>	<p>19</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>REDACTED</p>
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5 (Pages 17 to 20)

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**REDACTED**

**Q Other than FPG, why do you think Chinese chloride is not being sold on a bigger scale I guess or being sold into the U.S.?**

6 (Pages 21 to 24)

For The Record, Inc.  
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PX7003-007

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1 A I don't believe they have ample  
2 quantities to export to the U.S. China is still  
3 a net importer of chloride TiO<sub>2</sub>.  
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7 (Pages 25 to 28)

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PX7003-008

<p>29</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>31</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>30</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>32</p> <p>1 REDACTED 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

8 (Pages 29 to 32)

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9 (Pages 33 to 36)

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PX7003-010

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1       **Q** So, Mr. DeCastro, how do you think the  
2       **proposed acquisition of Cristal by Tronox will**  
3       **affect the TiO2 market going forward?**  
4       **A** I believe it will constrain supply.  
5       **Q** And why do you think it will constrain  
6       **supply?**  
7       **A** You have five companies going down to  
8       four.  
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10 (Pages 37 to 40)

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PX7003-011



**In the Matter of:**  
**Tronox and Cristal**

*March 9, 2018*  
*Steve DeCastro*

**Condensed Transcript with Word Index**



**For The Record, Inc.**  
**(301) 870-8025 - [www.ftrinc.net](http://www.ftrinc.net) - (800) 921-5555**

**PX7016-001**

1

1 UNITED STATES OF AMERICA  
 2 BEFORE THE FEDERAL TRADE COMMISSION

3 In the Matter of:

4 Tronox Limited )  
 5 a corporation, )  
 6 National Industrialization Company )  
 7 (TASNEE) ) Docket No. 9377  
 8 a corporation, )  
 9 National Titanium Dioxide Company )  
 10 Limited (Cristal) )  
 11 a corporation, )  
 12 and )  
 13 Cristal USA Inc. )  
 14 a corporation. )  
 15 ----- )  
 16 Friday, March 9, 2018  
 17  
 18 Arnold & Porter LLP  
 19 601 Massachusetts Avenue, N.W.  
 20 Washington, D.C. 20001-3743

21 The above-entitled matter came on for  
 22 videotaped deposition, pursuant to subpoena, at  
 23 9:06 a.m.  
 24  
 25

3

1 APPEARANCES:

2

3 ON BEHALF OF TRONOX LIMITED:

4 MICHAEL DERITA, ESQ.  
 5 Kirkland & Ellis  
 6 655 Fifteenth Street, N.W.  
 7 Washington, D.C. 20005  
 8 (202) 879-5122  
 9 michael.derita@kirkland.com

10

11 ON BEHALF OF RPM AND THE DEPONENT:

12 RICHARD T. HAMILTON, JR., ESQ.  
 13 Ulmer  
 14 1660 West 2nd Street  
 15 Suite 1100  
 16 Cleveland, Ohio 44113-1406  
 17 (216) 583-7466  
 18 rhamilton@ulmer.com

19

20

21 ALSO PRESENT:

22 RICHARD INTHASOROTH, Videographer  
 23  
 24  
 25

2

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 JOONSUK LEE, ESQ.  
 5 BLAKE RISENMAY, ESQ.  
 6 Federal Trade Commission  
 7 400 7th Street, S.W.  
 8 Washington, D.C. 20024  
 9 (202) 326-2823  
 10 jlee4@ftc.gov

11

12 ON BEHALF OF NATIONAL INDUSTRIALIZATION COMPANY,  
 13 NATIONAL TITANIUM DIOXIDE COMPANY LIMITED AND CRISTAL  
 14 USA INC.:

15 KATHERINE CLEMONS, ESQ.  
 16 PETER J. LEVITAS, ESQ.  
 17 Arnold & Porter LLP  
 18 601 Massachusetts Avenue, N.W.  
 19 Washington, D.C. 20001-3743  
 20 (202) 942-6004  
 21 katherine.clemons@arnoldporter.com  
 22  
 23  
 24  
 25

4

1 FEDERAL TRADE COMMISSION  
 2 I N D E X

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11	RPM	DESCRIPTION	FOR ID
12	Number1	9-18-2017 Investigational Hearing of Stephen DeCastro	11
13	Number2	RPM_SUBPOENA_0001469, Category Monthly Report: TiO2	35
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15	Number3	RPM_SUBPOENA_0004391- 0004395, 4-4-17 e-mail from S. DeCastro to S. Alexander	38
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1 MR. LEE: This is Joonsuk Lee with the  
2 Federal Trade Commission.  
3 MR. HAMILTON: Richard Hamilton with  
4 Ulmer & Berne, and I represent RPM and Steve DeCastro  
5 today.  
6 MR. RISENMAY: Blake Risenmay with the  
7 Federal Trade Commission.  
8 THE VIDEOGRAPHER: Will the court reporter  
9 please swear in the witness.  
10 - - - - -  
11 Whereupon --  
12 STEVE DeCASTRO  
13 a witness, called for examination, having been first  
14 duly sworn, was examined and testified as follows:  
15 EXAMINATION  
16 BY MS. CLEMONS:  
17 Q. Good morning, Mr. DeCastro.  
18 My name is Katherine Clemons. And I'm going to  
19 be asking you some questions, and then at some point we  
20 will -- we will switch over and the FTC may ask  
21 questions as well.  
22 So for the record, could you please state your  
23 name.  
24 A. Steve DeCastro.  
25 Q. And could you spell that for me, please.

6

1 PROCEEDINGS  
2 - - - - -  
3 THE VIDEOGRAPHER: Here begins the video  
4 deposition of Steve DeCastro taken in the matter of  
5 Tronox Limited versus [sic] Cristal USA in the  
6 Federal Trade Commission, Case Number D09377.  
7 Today's date is March 9, 2018.  
8 The time on the video monitor is 9:08.  
9 This deposition is being held at  
10 601 Massachusetts Avenue, Northwest, Washington, D.C.  
11 The court reporter is Josett Whalen on behalf  
12 of For The Record.  
13 The video operator is myself, Rich Inthasoroth,  
14 on behalf of For The Record.  
15 Will the counsel please introduce themselves  
16 and state whom they represent, beginning with the  
17 party noticing the deposition.  
18 MS. CLEMONS: My name is Katherine Clemons  
19 with Arnold & Porter. I represent respondents  
20 Cristal.  
21 MR. LEVITAS: This is Pete Levitas, also with  
22 Arnold & Porter, on behalf of respondent Cristal  
23 entities.  
24 MR. DERITA: This is Mike Derita with  
25 Kirkland & Ellis on behalf of Tronox.

8

1 A. S-T-E-V-E D-E-C-A-S-T-R-O.  
2 Q. Okay. Thank you.  
3 Before we get started, I'm going to go over  
4 some rules of the road. I think you may have been  
5 through this before, but I just want to go through  
6 things to refresh your memory on the rules for how  
7 we'll go through the deposition today.  
8 So I'm going to ask you questions. Your  
9 counsel, Mr. Hamilton, may object from time to time,  
10 but unless he instructs you not to answer, you have to  
11 answer my questions.  
12 So that we have a clear record, when you  
13 answer, I would ask that you do so verbally. Nods and  
14 gestures are not picked up on the record.  
15 And because there's a court reporter, we  
16 should not talk at the same time, so if you would wait  
17 for me to finish my question before you start  
18 speaking, and then I will try not to talk over you as  
19 well.  
20 If you don't understand any of my questions,  
21 please let me know. If you give an answer to a  
22 question that I've asked, I will assume that you  
23 understood the question unless you have said  
24 something.  
25 If you need to talk to your attorney at any

9

1 point, that's fine. I ask, though, that if there's a  
 2 question pending or if we're in the middle of a line  
 3 of questioning, that you finish answering before  
 4 speaking to your lawyer unless he instructs you not to  
 5 answer.  
 6 I generally try to take breaks every hour,  
 7 hour and a half, but if at any point you need to take a  
 8 break for any reason, just let me or your attorney  
 9 know. And I just ask that you finish answering the  
 10 question that's been put in front of you before we the  
 11 a break.  
 12 Do you understand that you are under oath  
 13 today?  
 14 A. Yes.  
 15 Q. Do you understand the instructions that I've  
 16 explained to you?  
 17 A. Yes.  
 18 Q. Okay. Do you have any questions about the  
 19 deposition or the instructions before we get started?  
 20 A. No.  
 21 Q. Okay. Is there any reason that you are unable  
 22 to tell the truth today, for example, have you taken  
 23 any medications that might make you not know where we  
 24 are right now, or any other reason you can think of why  
 25 you wouldn't be able to answer my questions fully and

11

1 A. Yes.  
 2 Q. And have you reviewed the transcript since you  
 3 testified?  
 4 A. Yes.  
 5 Q. Okay. When did you review the transcript?  
 6 A. Yesterday.  
 7 Q. Okay. So is there anything in your testimony  
 8 from that hearing that you believe was incorrect?  
 9 A. I don't think so.  
 10 Q. Okay. Anything else you'd like to clarify  
 11 before we get started?  
 12 A. I don't believe so.  
 13 Q. Okay. I may refer to this transcript from time  
 14 to time just to get a little more clarification on some  
 15 of the things that you talked about during that –  
 16 during that hearing.  
 17 (RPM Deposition Exhibit Number 1,  
 18 9-18-2017 Investigational Hearing of Stephen DeCastro,  
 19 was marked for identification.)  
 20 BY MS. CLEMONS:  
 21 Q. So to start, I'd like to get a little more  
 22 background on your role at RPM.  
 23 You're here today – are you – you're here  
 24 today as a corporate representative of  
 25 RPM, Incorporated; is that right?

10

1 accurately?  
 2 A. No.  
 3 Q. Okay. So have you ever testified under oath  
 4 before, Mr. DeCastro?  
 5 A. Yes.  
 6 Q. And how many times?  
 7 A. Two to three maybe.  
 8 Q. Okay. What were the purposes of those  
 9 testimonies?  
 10 A. Many years ago, I was the chairman of the local  
 11 school board, so we were involved in various  
 12 litigations and things, so that's probably some  
 13 instances there. And a few months ago, I testified in  
 14 front of the FTC here in Washington.  
 15 Q. Okay. And was that – that was in September of  
 16 2017; right?  
 17 A. Correct.  
 18 Q. Okay. I have the first exhibit. I'm going to  
 19 hand you a document, and I will represent to you that  
 20 this is the official transcript of your testimony on  
 21 September 18, 2017.  
 22 I'll give you a minute to look that over and  
 23 then we will mark this as Exhibit 1, RPM 1.  
 24 (Document review.)  
 25 All right. Do you recognize this transcript?

12

1 A. Yes.  
 2 Q. Okay. And you're also here to testify as – in  
 3 your individual capacity as Steve DeCastro.  
 4 A. Yes.  
 5 Q. Okay. Can you tell me a little bit about what  
 6 you did to prepare for today's deposition?  
 7 A. Went through the subpoena that was given to me  
 8 by our attorney, reviewed some of those questions on  
 9 the subpoena, looked for some of the answers that I may  
 10 have for some of those questions, went through the  
 11 testimony that I gave previously, and spent probably  
 12 10 to 15 hours on the phone reviewing documents and  
 13 questions from our attorney.  
 14 Q. Okay. And the 10 to 15 hours on the phone, was  
 15 that with your attorney or someone else?  
 16 A. Yes, with attorney.  
 17 Q. Okay. Did you meet with anyone other than your  
 18 attorney?  
 19 A. More than one attorney.  
 20 Q. Okay. Did you review – you – did you review  
 21 documents to prepare for the deposition? I think you  
 22 mentioned that you did.  
 23 A. Yes.  
 24 Q. Were any of those documents documents, if you  
 25 know, that have not been produced to Cristal in

1 response to the subpoena?  
 2 A. I don't know what's been produced.  
 3 Q. Okay. So your employer is -- who are you  
 4 employed by?  
 5 A. Rust-Oleum.  
 6 Q. Okay. And how does Rust-Oleum relate to RPM?  
 7 A. Rust-Oleum is a subsidiary of RPM.  
 8 Q. Okay. What is your current position at  
 9 Rust-Oleum?  
 10 A. I'm the vice president of purchasing.  
 11 Q. Okay. And I think you testified in September  
 12 that you've been in that position for about 14 years;  
 13 is that right?  
 14 A. Correct.  
 15 Q. Have you held any other positions during that  
 16 14-year period?  
 17 A. No.  
 18 Q. Okay. I think you previously testified that  
 19 your responsibilities as VP of purchasing include  
 20 overseeing and negotiating all of the chemical  
 21 purchases that Rust-Oleum is engaged in.  
 22 Is that an accurate description of your general  
 23 responsibilities?  
 24 A. Correct.  
 25 Q. Okay. And that includes TiO2 purchases;

1 I'm referring to the company, or if I say "the  
 2 company," generally I'll be asking about RPM and any of  
 3 its subsidiaries that you have responsibility for with  
 4 regard to TiO2.  
 5 So if there's a distinction or there is a -- an  
 6 answer where the answer is more limited to just  
 7 Rust-Oleum or just another subsidiary, please let me  
 8 know. Otherwise, I'm going to assume that the answer  
 9 is true across all of the RPM subsidiaries that you're  
 10 involved with.  
 11 A. Okay.  
 12 Q. Okay. So you are the lead person who  
 13 negotiates TiO2 prices and quantities for Rust-Oleum  
 14 and for other RPM companies that use TiO2; is that --  
 15 that's -- do I have that correct?  
 16 A. Yes.  
 17 Q. Okay. Is that for all negotiations related to  
 18 TiO2 or are some of them handled by the companies  
 19 individually?  
 20 A. 98 percent. I won't say a hundred percent, but  
 21 98 percent.  
 22 **REDACTED**  
 23 **REDACTED**  
 24 **REDACTED**  
 25 Q. Okay. What other RPM entities use TiO2?

1 right?  
 2 A. Yes.  
 3 Q. Okay. Are your responsibilities limited to  
 4 Rust-Oleum or do they extend more broadly?  
 5 A. In some instances they may extend more  
 6 broadly.  
 7 Q. Okay. Can you describe those instances -- some  
 8 of those instances to me.  
 9 A. Some of the larger commodities, I would  
 10 negotiate the pricing and supply quantities for other  
 11 RPM companies as well as Rust-Oleum.  
 12 Q. Okay. Is that true for TiO2? Is that one of  
 13 the commodities?  
 14 A. Yes.  
 15 Q. Okay. So you negotiate pricing and quantity;  
 16 is that right?  
 17 A. Yes.  
 18 Q. Is that for all of the RPM companies that use  
 19 TiO2?  
 20 A. All of the North American RPM companies.  
 21 Q. Okay. Do you have any responsibility with  
 22 regard to purchases of TiO2 outside of North America?  
 23 A. No.  
 24 Q. Okay. So as we go through, I will ask  
 25 questions generally about you or the -- I say "you" and

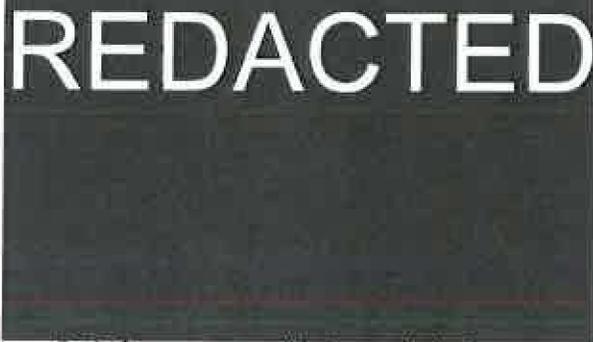
1 A. Carboline.  
 2 Q. Okay. And what -- sorry. Maybe it might be  
 3 helpful if we go -- we'll go through them, if you could  
 4 just tell me the top five or six at least, and then we  
 5 can -- if you could tell me a little bit about, at a  
 6 very high level, what that company does.  
 7 So, for example, you mentioned Carboline, and  
 8 what kind of company is Carboline?  
 9 A. Carboline makes coatings for exterior tanks,  
 10 railcars, things of that nature --  
 11 Q. Okay.  
 12 A. -- some floor coatings as well.  
 13 Q. Okay. And then Rust-Oleum, Rust-Oleum is a  
 14 coatings company as well; is that right?  
 15 A. Correct.  
 16 Q. Okay. What are some of the other companies,  
 17 RPM companies, that use TiO2?  
 18 A. Dryvit.  
 19 Q. Okay. What does Dryvit use TiO2 for?  
 20 A. Dryvit makes an exterior-type insulation  
 21 product.  
 22 Q. Okay. Other companies?  
 23 A. Wood Finishing Group.  
 24 Q. I assume they make wood finishings?  
 25 A. Yeah. Correct.

17

19

1 Q. Are there any other big, as a relative matter,  
 2 big TiO2 users in the RPM family?  
 3 A. Tremco.  
 4 Q. What does Tremco do?  
 5 A. Roofing products.  
 6 Q. Okay.  
 7 A. Sealants.  
 8 DAP makes caulks.  
 9 Q. Okay. So I think you mentioned that you  
 10 negotiate about 98 percent of the time on price and  
 11 quantity for TiO2.  
 12 Can you give me an example of the 2 percent of  
 13 the times when you would not be responsible for doing  
 14 that negotiation?  
 15 A. There may be instances where a particular RPM  
 16 company would buy a product through a distributor and  
 17 not directly from the manufacturer, so I may -- I  
 18 probably wouldn't be involved in that.  
 19 Q. Okay. Under what circumstances would they be  
 20 buying from a distributor instead of a manufacturer?  
 21 A. There may be a unique application that they  
 22 have, so it may not be from a supplier that I have a  
 23 direct relationship with --  
 24 Q. Okay.  
 25 A. -- at the time.

1 A. Yes.  
 2 Q. Okay. Do you ever -- do those companies ever  
 3 negotiate directly with the TiO2 suppliers other than  
 4 in the circumstances you discussed about ordering  
 5 directly from a distributor?  
 6 A. Not that I'm aware of.  
 7 Q. Okay. So you're responsible for negotiating  
 8 price and quantity.  
 9 Do you also -- are you also involved with  
 10 submitting of purchase orders?  
 11 A. No.



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25 Q. And are you responsible for purchasing for

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1 Q. And when those companies are purchasing through  
 2 a distributor, do they communicate with you about the  
 3 purchase at all?  
 4 A. Sometimes, sometimes not.  
 5 Q. Okay. Do they need to get your sign-off for  
 6 purchases outside of the normal process?  
 7 A. No.  
 8 Q. Okay. I'd like to understand a little bit  
 9 more about sort of your role with that negotiation  
 10 process versus the roles of the other companies.  
 11 So for those subsidiaries that we talked about  
 12 and any other subsidiaries that use TiO2, are there  
 13 procurement teams at those companies or procurement  
 14 people?  
 15 A. Yes.  
 16 Q. Okay. And what is their, those procurement  
 17 folks', relationship to you? Do they report to you?  
 18 A. No.  
 19 Q. Okay. How would you describe your role  
 20 relative to the procurement teams at the individual  
 21 companies?  
 22 A. We share data and we speak, so I would say we  
 23 try to work together.  
 24 Q. Okay. And are you the main point of contact  
 25 for the TiO2 suppliers?

1 Rust-Oleum?  
 2 A. I don't know what you mean by "purchasing."  
 3 Q. So you had explained that you are responsible  
 4 for negotiating prices and quantities generally for  
 5 RPM but that there are individual procurement -- there  
 6 are individual people at the companies responsible for  
 7 actually doing the purchasing. Is that right?  
 8 A. Yes.  
 9 Q. For Rust-Oleum, where you are the VP of  
 10 purchasing, are you responsible or involved with  
 11 putting in the purchase orders for Rust-Oleum?  
 12 A. No.  
 13 Q. Okay. So is your role with respect to  
 14 Rust-Oleum and TiO2 the same as it is with respect to  
 15 the other RPM companies?  
 16 A. For the most part, yes.  
 17 Q. Is there anything additional that you do for  
 18 Rust-Oleum that you don't do in your responsibilities  
 19 to the other companies?  
 20 A. I would direct how much to buy on a  
 21 monthly/quarterly basis from various suppliers, where I  
 22 don't would that with the other RPM companies.  
 23 Q. Okay. But you are responsible for negotiating  
 24 quantity on behalf of the other companies.  
 25 A. Quantity in terms of contractual obligations,

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**Q. Okay. So how -- you're in communication with the RPM companies.**  
**How do you decide what types of TiO2 to contract for?**  
**A. What do you mean by "types"?**  
**Q. Are there -- so I guess, are there different -- there are different grades of TiO2; is that right?**

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**Q. And how do you know when prices are going down?**  
**A. It's general market knowledge.**  
**Q. And what are your sources for the general market knowledge?**  
**A. Talking to other people in the industry. Sometimes suppliers will tell you. I mean, it depends.**

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**A. Correct.**  
**Q. And so how do you know which grades to -- to negotiate over?**  
**A. Define "grades."**  
**Q. Well, I guess I'll ask you this.**  
**Are there different types of TiO2 that RPM is using?**  
**A. Yes.**  
**Q. What are some of the different types and how -- how does the company define the different products that it's ordering?**  
**A. I don't understand what you mean by "types."**

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8 (Pages 29 to 32)

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9 (Pages 33 to 36)

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11 (Pages 41 to 44)

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REDACTED

- 1 **Q. Do the companies that RPM purchases from change**
- 2 **from year to year?**
- 3 A. They can.
- 4 **Q. Have they historically?**
- 5 A. In the last few years they have.
- 6 **Q. What's driven those changes the last two**
- 7 **years?**
- 8 A. Either supply being short or supply being
- 9 long.
- 10 **Q. Okay. With individual suppliers or generally?**
- 11 A. The general market.
- 12 **Q. Okay. Is supply short or long right now?**
- 13 A. Short.

REDACTED

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**REDACTED**

1 What other regions is RPM purchasing TiO2 in?  
2 A. The rest of the world.  
3 Q. Okay. Does RPM have operations across the  
4 globe?  
5 A. Yes.  
6 Q. Okay. Are you -- are you involved with  
7 purchasing in other regions at all?  
8 A. On an advisory basis it's possible.  
9 Q. Okay. Are you communicating between -- do the  
10 different regions communicate about aspects of  
11 TiO2 purchasing?  
12 A. Yes.  
13 Q. What do you communicate about?  
14 A. We communicate about what the availability  
15 looks like, what the pricing looks like in different  
16 markets, and where we think the market is going or  
17 headed and general commodity information that everyone  
18 would want to run their paint business.

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**REDACTED**

15 Q. Okay. So you're responsible for North American  
16 purchasing; is that right?  
17 A. Correct.  
18 Q. Does purchasing -- is purchasing different  
19 across other regions?  
20 A. Yes.  
21 Q. In what ways?  
22 A. Prices may be different. Types of TiO2 and  
23 grade may be different in other parts of the world.  
24 Q. Okay. Who handles the purchasing -- I guess  
25 let's back up a little bit.

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**REDACTED**

9 Q. Okay. So does RPM -- do RPM's TiO2 needs  
10 change over time?  
11 A. They can if we make acquisitions.  
12 Q. Aside from new companies coming into the RPM  
13 family, are there factors that affect how much TiO2 the  
14 collective companies or individual companies need?  
15 A. Yeah. If our business grows, they'll need  
16 more.  
17 Q. Okay. Is there any seasonality to the -- their  
18 TiO2 needs?  
19 A. Can be.  
20 Q. Under what circumstances?  
21 A. In the winter months we may use less because  
22 people are not painting as they would normally when  
23 it's warmer.  
24 Q. Are there other -- have there been other major  
25 shifts in RPM's TiO2 needs on a year-to-year basis?

1 A. Yeah. Like I said, acquisitions. I mean, we  
 2 just bought a company in Europe a year and a half ago  
 3 and they're a heavy TiO2 user.  
 4 Q. Okay. What company is that?  
 5 A. SPS.  
 6 Q. Do you know what they do?  
 7 A. Yeah. They make paint.

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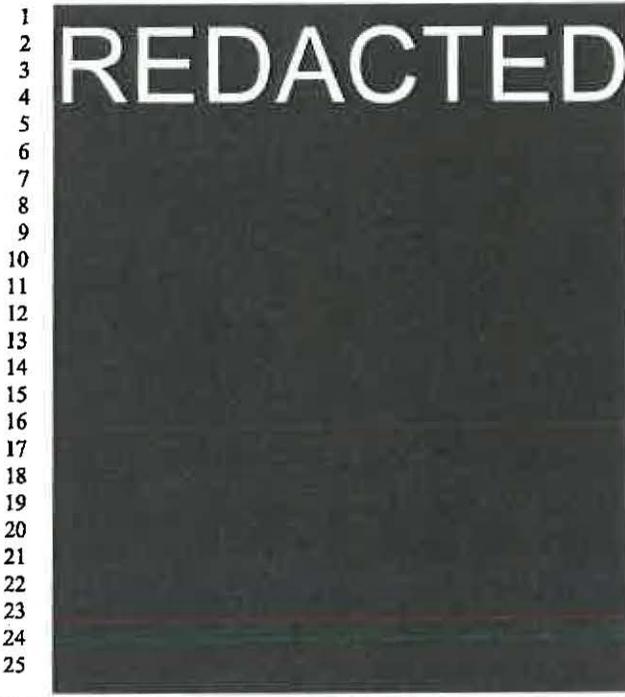
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 19 **If the market is short, how did you build up**  
 20 **the excess inventory?**  
 21 A. Over time.  
 22 Q. So did you – did RPM or Rust-Oleum anticipate  
 23 that the market would become short?  
 24 A. Yes.  
 25 Q. How did you anticipate that?

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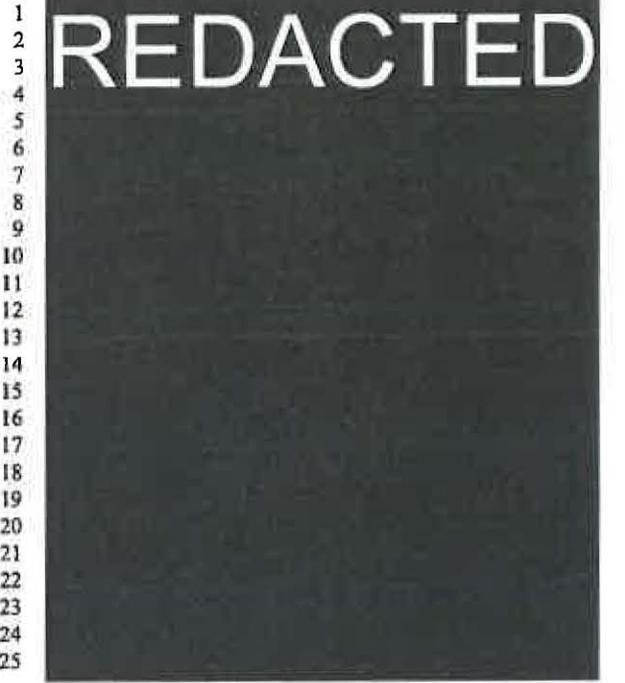
1 A. It's my job.  
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Q. Had you heard anything in the industry about an

1 anticipated shortage?  
 2 A. Yeah. In my discussions with all of our  
 3 suppliers, they warned me that shortages were coming as  
 4 well.  
 5 Q. So do you think or have any knowledge of  
 6 whether other customers, other TiO2 customers, took  
 7 steps to prepare for the shortage?  
 8 A. I don't know.  
 9 Q. So has RPM experienced any major TiO2 supply  
 10 disruptions in the last few years?  
 11 A. In 2011 or so there were instances where  
 12 product was extremely hard to get.  
 13 Q. Do you know what caused the shortage?  
 14 A. The same thing now, demand is stronger than  
 15 supply.  
 16 Q. Do you know why supply -- do you know what's  
 17 causing demand to be stronger or supply to be lower?  
 18 A. Yeah. TiO2 demand generally follows GDP, so as  
 19 GDP goes up, TiO2 demand typically goes up.  
 20 Q. Okay. Were there any specific causes of supply  
 21 disruptions in 2011 you said?  
 22 A. Just that there may have been some plant  
 23 outages. There may have been some closure of plants.  
 24 There were some TiO2 companies that were certainly  
 25 trying to, you know, cut back on their capacity --



1 Q. Okay.  
 2 A. -- so that could play into it as well, so it --  
 3 it's a -- could be a factor of things.  
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15 (Pages 57 to 60)

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8 Q. Okay. Are you aware of any plans by your  
9 suppliers to increase capacity for TiO2 production?

10 So I think you – you had mentioned back in  
11 September that you were aware of Chemours' efforts to  
12 increase capacity at its Mexico facility.

13 Is there anything else that you are aware of?

14 A. That is all I'm aware of, is Chemours. But  
15 Chemours also shut down lines here in the U.S., so I  
16 don't know how much their capacity is really going up.

17 Q. Okay. Are you aware of any plans by Chinese  
18 suppliers to increase capacity?

19 A. They're talking about increasing capacity, but  
20 the problem is there are more TiO2 plants closing in  
21 China now than capacity being put on.

22 Q. Do you know what's causing that?

23 A. Environmental regulations.

24 Q. Can you explain a little bit about your  
25 understanding of what's happening in China?

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1 A. Yeah. What's happening is that they're – the  
2 government seems to be very concerned about the  
3 pollution and the air quality, so they're trying to  
4 close not only TiO2 manufacturing facilities but other  
5 manufacturing facilities that would contribute to air  
6 quality.  
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18 (Pages 69 to 72)

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MS. CLEMONS: Okay.  
So I think -- I think that's all that we have for you right now. We do reserve -- we reserve our remaining time, but I think we can turn things over to the FTC.  
MR. LEE: Sure. Thank you.  
I think we can continue without taking another break.  
THE WITNESS: Sure.  
EXAMINATION  
BY MR. LEE:  
Q. Good morning again, Mr. DeCastro.  
A. Good morning.  
Q. My name is Joonsuk Lee. I'm an attorney with the Federal Trade Commission.  
I'm going to ask you questions. I may jump around a little bit because counsel has covered a

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A. Zinsser and Rust-Oleum merged into one company. That's how I ended up working for Rust-Oleum.  
Q. What products does Zinsser produce?  
A. Primers mainly, paint primers, wallpaper removers, lots of different paint-type products, mainly primers, though.  
Q. I heard the term "primers" many times during the questioning and answering in the previous session, but what are the primers?  
A. Primers are a paint that is used before you would put a top coat on to hide imperfections of the wall that you're painting or the substrate that you're painting to stop stains and other imperfections that would be in the substrate that you're painting.  
Q. Thank you.  
A. It's not meant as a top coat.  
Q. Thank you.  
So when you say "top coat," it's the paint that will be covered over primers; correct?  
A. Correct.  
Q. And if you are a consumer, you would not see the primer because it's covered by top coat; correct?  
A. Correct.  
Q. So does color matters for primers?

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number of areas that I would otherwise cover, so if you need a frame of reference for any of my questions, just say that a second and tell me what we are talking about here before I jump in.  
Is that okay?  
A. Yes.  
Q. Okay. Let me take a step back and ask you some more background questions.  
Is that okay?  
A. Sure.  
Q. So your current employer is Rust-Oleum; correct?  
A. Correct.  
Q. And you are vice president of purchasing; correct?  
A. Yes.  
Q. At Rust-Oleum.  
A. Yes.  
Q. And you've been in your current position for about 14 years?  
A. Yes.  
Q. And before you became vice president of purchasing, did you work at Rust-Oleum?  
A. I worked for another RPM company, Zin Zinsser.  
Q. Is Zinsser still RPM company?

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A. Somewhat it matters. Some -- it depends on the application. Some people may want it to be more white. Sometimes primers are tinted because you're painting over another color of paint, and so you want to hide that, so you may even get your primer tinted at the store so it would hide better.  
Q. Thank you.  
But compared to top coats, primers are not as sens- -- color-sensitive; correct?  
A. Correct.  
Q. Does Zinsser or Rust-Oleum make top coat architectural paints?  
A. No. Not -- what -- not -- we -- we're making -- we're starting to make a few today, but in the past we haven't made any.  
Q. So is it fair to say the majority of TiO2 purchased and used by Rust-Oleum is used for primers?  
A. Primers and -- but we do make some topcoats in our aerosol line, aerosol paints and small project paints.  
Q. What is aerosol paints?  
A. Aerosol paint is a spray paint.  
Q. In cans?  
A. In cans.

1 Q. And the colors for those aerosol paints are  
 2 premixed or pretinted at the factory; correct?  
 3 A. Correct.  
 4 Q. It's not tinted at the point of sale?  
 5 A. Correct.  
 6 Q. And in the U.S., topcoat architectural paints  
 7 are usually mixed tint at a point of sale; correct?  
 8 A. Correct.  
 9 Q. And you mentioned there are some shades or  
 10 colors for primers.  
 11 Typically, how many colors does Rust-Oleum  
 12 offer for primers?  
 13 A. For primers? Mainly just one. It's --  
 14 you know, it's not significantly color-determined, but  
 15 it's one.  
 16 There may be some that we offer that may be  
 17 able -- that would have less TiO2 in it that someone  
 18 would want a deep tint so they could tint it at the  
 19 store so they could cover something if they were going  
 20 to put a deeper paint over. But for the most part, we  
 21 don't match color very well for primers. It's not a  
 22 significant thing. But we -- we want to make sure that  
 23 it hides properly, so it's got the proper hide.  
 24 Q. Thank you.  
 25 A. That's the key of the primers.

1 products.  
 2 Q. And what was your role at the  
 3 Parks Corporation?  
 4 A. I was the general manager.  
 5 Q. And were you also involved in purchasing  
 6 TiO2 at the time?  
 7 A. Yes.  
 8 Q. For how long?  
 9 A. 18 years.  
 10 Q. And I'm sorry if I keep asking this question,  
 11 but before the Parks Corporation, were you also  
 12 involved in purchasing TiO2?  
 13 A. No.  
 14 Q. So the total would be 18 plus about 18, about  
 15 36 years of experience?  
 16 A. Pretty close to that.  
 17 Q. Relating to purchasing TiO2.  
 18 A. Yes.  
 19 Q. And coming back to the RPM companies or  
 20 subsidiaries, is Rust-Oleum the largest user of  
 21 TiO2 among RPM companies?  
 22 A. Yes.  
 23 Q. And you said about, in North America,  
 24 65 percent of TiO2 is being used by Rust-Oleum;  
 25 correct?

1 Q. Thank you.  
 2 And you said you were employed by Zinsser  
 3 before it was acquired by RPM.  
 4 How long did you work at Zinsser?  
 5 A. Zinsser was already a part of RPM when I went  
 6 to work there. I went to work for Zinsser in July of  
 7 2000.  
 8 Q. And what was your position at Zinsser before  
 9 you became a vice president of purchasing at  
 10 Rust-Oleum?  
 11 A. The same position.  
 12 Q. Vice president --  
 13 A. Vice president of purchasing.  
 14 Q. Thank you.  
 15 And as vice president of purchasing at Zinsser,  
 16 you were also responsible for TiO2?  
 17 A. Correct.  
 18 Q. And where did you work before you were employed  
 19 at Zinsser at July 2000?  
 20 A. I worked for a company called  
 21 Parks Corporation, P-A-R-K-S.  
 22 Q. And what was the product manufactured by the  
 23 Parks Corporation?  
 24 A. We made paint and coatings, packaged solvents,  
 25 paint removers, clear finishes, all of those types of

1 A. Correct.  
 2 Q. And the counsel asked about other RPM  
 3 companies that use TiO2, and you mentioned a few names.  
 4 If you wouldn't mind, I would like to go over a little  
 5 bit. I make sure I'm not really repeating the same  
 6 question.  
 7 So the first company name I heard is  
 8 Carboline.  
 9 Is it an RPM company?  
 10 A. Yes.  
 11 Q. And you mentioned they make coatings for  
 12 exterior tanks, railcars and some floor coatings;  
 13 correct?  
 14 A. Correct.  
 15 Q. Could you describe a little more about what are  
 16 these products.  
 17 A. They're paints that mainly provide rust  
 18 protection for exterior metal use. That's what  
 19 Carboline mainly sells.  
 20 Q. Does color matter for these type of products?  
 21 A. They have some colors, but I don't know  
 22 specifically how much color matters in that Carboline  
 23 product line.  
 24 Q. Thank you.  
 25 Let's move on to Dryvit.

1 Is this spelled like D-R-Y-V-I-T?  
 2 A. Correct.  
 3 Q. And they make exterior-type insulation  
 4 products; correct?  
 5 A. Yes.  
 6 Q. And does color matter for these type of  
 7 products?  
 8 A. They do have colors. Yeah, they matter.  
 9 You'll see their EIFS products, which is exterior  
 10 insulation products, on the -- a lot of buildings,  
 11 industrial buildings, so yeah, color definitely  
 12 matters because they're matching colors whatever  
 13 the -- whatever the -- whatever they're supposed to  
 14 match.  
 15 Q. Do you recall how many -- sorry. Strike that.  
 16 Let's move on to the next one, the  
 17 Wood Finishing Group. And they make wood finishings;  
 18 correct?  
 19 A. Correct.  
 20 Q. And they use TiO2 to make lacquers and --  
 21 A. Various paints and coatings. Yes.  
 22 Q. And you also mentioned the name Tremco, and  
 23 they're making roofing products and sealant; correct?  
 24 A. Correct.  
 25 Q. Does color matter for these type of products?

1 A. Yeah. But more for metal that someone can put  
 2 an electrostatic charge to so the coating -- it's a  
 3 powder coating, so the coating basically adheres to the  
 4 metal.  
 5 Q. Thank you.  
 6 Does any of these other RPM companies we just  
 7 mentioned use sulfate TiO2?  
 8 A. I believe Tremco does.  
 9 Q. The other RPM companies we just discussed do  
 10 not use sulfate and only use chloride TiO2?  
 11 A. For the most part, I believe that's correct.  
 12 Q. And I believe the counsel and you,  
 13 Mr. DeCastro, discussed a little bit about slurry. And  
 14 I'm referring here to slurry TiO2, to be clear.  
 15 And RPM purchases TiO2 in slurry form;  
 16 correct?  
 17 A. We do.



1 A. It may if someone wants a particular color for  
 2 their roof. I would guess that white would probably  
 3 matter because white would be very reflective of heat,  
 4 so I would think white would be important to a roof  
 5 coating.  
 6 Q. And the last one you mentioned, if I recall  
 7 correctly, was DAP, D-A-P, and that they make caulks;  
 8 correct?  
 9 A. Correct.  
 10 Q. And caulks are white; correct?  
 11 A. Correct.  
 12 Q. And so we went through Carboline, Dryvit,  
 13 Wood Finishing Group, Tremco and DAP.  
 14 Do you have a sense that -- how much of  
 15 TiO2 these companies purchase and use?  
 16 A. I do. I'd have to refer to some other data to  
 17 take a look at that, but yeah. They -- them along  
 18 with a few other companies would represent the  
 19 remaining 35 percent of TiO2.  
 20 TCI would be another company that buys a lot of  
 21 TiO2. It's an RPM company.  
 22 Q. Sorry. What does TCI make?  
 23 A. TCI makes powder coatings, so electrostatic  
 24 powder coatings.  
 25 Q. That's like industrial coatings?

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 6 Q. And RPM has -- strike that.  
 7 Has RPM ever purchased sulfate TiO2 slurry?  
 8 A. No. It doesn't exist.  
 9 Q. Do you have any understanding why it doesn't  
 10 exist?  
 11 A. Because it wouldn't be made on this continent  
 12 and it would have to be either -- someone else would  
 13 have to make it from the dry TiO2 that would come into  
 14 this continent and do it here, or if it would be made  
 15 somewhere else, then they would have to ship it, and  
 16 you're shipping 25 percent water.



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**REDACTED**

And do you know where Cristal manufacture the chloride slurry TiO2 in the U.S.?

A. Ashtabula, Ohio.

Q. And how is it delivered to the RPM Rust-Oleum locations?

A. In bulk tank trucks.

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Q. Granted, I didn't write down everything, but it sounds like mostly they are on the East Coast and some Midwest; correct?

A. Yes.

Q. And when you buy an imported TiO2 from China, at which U.S. ports they arrive at?

A. They arrive typically at U.S. ports on the east. Sometimes they arrive at ports on the West Coast. It may be Vancouver or Seattle. And they will -- they will basically rail it from those ports to Chicago if it was going to Chicago.

But if it was going to an East Coast location, it would have come into an East Coast port. If it was going to Chicago, it may come to an East Coast port or it may go to a West Coast port and get railed over.

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And it's your understanding that the domestic TiO2 plants are making hundred percent chloride TiO2 in the United States; correct?

A. In the U.S., that's correct.

Q. And is it your understanding that there's one Kronos plant in Canada that makes sulfate TiO2? Correct?

A. Correct.

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Q. Mr. DeCastro, are you familiar with the distinction between sulfate and anatase TiO2?

A. I'm familiar with sulfate. I don't have a lot of experience buying anatase grade TiO2.

Q. Has RPM bought any anatase grade TiO2?

A. Not that I'm aware of.

Q. And is there any reason why RPM has not purchased anatase TiO2?

A. My understanding is that anatase TiO2, it's a different chemical process that's used and may be a different feedstock of the ore as well. And anatase TiO2 is used mainly in paper and ink coatings. That's my understanding.

Q. Thank you.

I believe earlier you and the Cristal counsel discussed sulfate and chloride TiO2, and I have a few follow-up questions on that.

I believe you mentioned performance is one factor that matters to decide which grade of TiO2 does RPM buy and use. Is that fair?

A. Yes.

Q. If you compare the performances of chloride grade TiO2 and sulfate grade TiO2, could you describe the difference?

MS. CLEMONS: Objection. Form.

THE WITNESS: The -- in our opinion, at least

1 the opinion of our lab folks, chloride TiO2 is a  
2 better product than sulfate TiO2 for our applications.

3 BY MR. LEE:

4 Q. Could you please elaborate when you say a  
5 better product for RPM's applications.

6 A. It is a whiter product, and I think it has --  
7 the different grades of chloride TiO2 that are sold  
8 here in the U.S. have some distinct surface treatments  
9 available to them that may make them more attractive  
10 for an exterior-type application, so that's kind of the  
11 difference between those type of products.

12 They also may enable you -- the chloride TiO2,  
13 from what I understand from people in the lab, give us  
14 a better gloss if we're looking for a higher-gloss  
15 product as well. The sulfate TiO2 may not give you  
16 the gloss if you're looking for a higher-gloss  
17 product.

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MR. LEE: I think I've been going about 55 minutes, but I do have more materials and more questions to ask. Is it a good time to take a lunch break?

MR. LEVITAS: Yeah, we can do that.

THE WITNESS: Sure.

THE VIDEOGRAPHER: We're going off record at 12:00.  
(Whereupon, at 11:58 a.m., a lunch recess was taken.)

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AFTERNOON SESSION  
(1:02 p.m.)

THE VIDEOGRAPHER: We're on record at 13:05.

BY MR. LEE:

Q. Okay, Mr. DeCastro. I hope you had a good lunch.

A. Yes.

**REDACTED**

26 (Pages 101 to 104)

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<p>105</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>REDACTED</p>	<p>107</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>REDACTED</p>
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27 (Pages 105 to 108)

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**Q.** Do you recall when was the -- approximately the explosion event at Huntsman plant in Finland?

**A.** I don't recall exactly, but it was sometime I think in the beginning of last year.

**Q.** And what happened to the TiO2 price in Europe after that?

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A. Oh, it went up.

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30 (Pages 117 to 120)

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31 (Pages 121 to 124)

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Q. And my last question relating to this slide is – okay. Strike that, strike that, please.  
Let me ask you one more question relating to the proposed acquisition of Cristal by Tronox.  
How do you think this proposed acquisition of Cristal by Tronox would affect Rust-Oleum's purchasing of TiO2?  
MS. CLEMONS: Objection. Calls for speculation.  
THE WITNESS: What do you mean by "affect"?  
BY MR. LEE:  
Q. If this deal – let's assume this deal closes. Then what would be – sitting here today, what would be your thoughts on the effect on Rust-Oleum/RPM's TiO2 purchasing?  
MS. CLEMONS: Same objection.  
THE WITNESS: My opinion is, is that when you have less producers, it's not good for buyers.  
MR. LEE: Thank you.  
That's all I have for now, but I reserve my time to ask any follow-up questions if needed.

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MS. CLEMONS: We should take a break.  
THE VIDEOGRAPHER: Going off record at 13:43. (Recess)  
THE VIDEOGRAPHER: We go on record at 14:08.

EXAMINATION  
BY MS. CLEMONS:  
Q. Welcome back, Mr. DeCastro.  
I'm just going to ask you a few questions specifically about some of the things that the counsel for the FTC had discussed with you.

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**Q.** Moving on to a different topic, are you aware that -- of any public statements by Tronox that if this deal, the deal between Tronox and Cristal, goes through, it will -- the combined company will increase output?

**A.** I'm not specifically aware of that.

**Q.** Okay. So I will represent to you that Tronox has in fact publicly stated that if this deal is

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approved, the combined company will increase its TiO2 output.

**So if in fact that happens and output increases, in your experience, what will happen to the prices of TiO2?**

**MR. LEE:** Objection to the form. A hypothetical.

**THE WITNESS:** It depends how much the output increases.

**BY MS. CLEMONS:**

**Q.** Why does it depend on how much the output increases?

**A.** If they increase it 1 percent, it will have no effect.

**Q.** Okay. So if output goes up by more than 1 percent?

**A.** Don't know the exact number, but it would have to be I would say greater than 5 percent to have any effect.

**Q.** Okay. And if there is an increase in output at those levels, what effect do you think that would have on pricing?

**MR. LEE:** Objection.

**THE WITNESS:** I think the price would stabilize.

1 BY MS. CLEMONS:  
 2 Q. Okay. What do you mean by "stabilize"?  
 3 A. It would stay at a status quo at whatever  
 4 place it's in, depending upon what happens to demand as  
 5 well during that period of time.  
 6 Q. Okay. So if demand stays the same and output  
 7 increases --  
 8 MR. LEE: Objection. Asking for speculation.  
 9 BY MS. CLEMONS:



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1 MS. CLEMONS: That works for us.  
 2 MR. HAMILTON: Okay. Great. Thank you.  
 3 THE VIDEOGRAPHER: We are off record at 14:18.  
 4 (Whereupon, the foregoing deposition was  
 5 concluded at 2:16 p.m.)  
 6 (Reading and signature not waived.)  
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1 MR. LEE: Just give us one minute.  
 2 THE VIDEOGRAPHER: Going off record at 14:16.  
 3 (Recess)  
 4 THE VIDEOGRAPHER: We are on record at 14:17.  
 5 MR. LEE: We don't have anything further.  
 6 Thank you very much, Mr. DeCastro, for your  
 7 time.  
 8 THE WITNESS: Thank you.  
 9 MS. CLEMONS: And thank you.  
 10 THE VIDEOGRAPHER: We are off record at 14:17.  
 11 (Discussion off the record.)  
 12 THE VIDEOGRAPHER: We are on record at 14:17.  
 13 MR. HAMILTON: There is a protective order in  
 14 this case, and so certainly we want this testimony  
 15 today that Mr. DeCastro provided, I think mostly on  
 16 behalf of RPM as a designee -- maybe some of it bled  
 17 over into his individual capacity -- to be covered by  
 18 the protective order as confidential material.  
 19 MS. CLEMONS: Yes.  
 20 MR. HAMILTON: And in terms of reading and  
 21 waiver, we'd certainly like to be able to see the  
 22 transcript, right?  
 23 THE WITNESS: Sure.  
 24 MR. HAMILTON: Okay. So we're not waiving.  
 25 MR. LEE: Sure.

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1 DISTRICT OF COLUMBIA, to wit:  
 2 I, Josett F. Whalen, before whom the foregoing  
 3 deposition was taken, do hereby certify that the  
 4 within-named witness personally appeared before me at  
 5 the time and place herein set out, and after having  
 6 been duly sworn by me, according to law, was examined  
 7 by counsel.  
 8 I further certify that the examination was  
 9 recorded stenographically by me and this transcript is  
 10 a true record of the proceedings.  
 11 I further certify that I am not of counsel to  
 12 any party, nor an employee of counsel, nor related to  
 13 any party, nor in any way interested in the outcome of  
 14 this action.  
 15 As witness my hand and notarial seal this  
 16 day of \_\_\_\_\_, 2018.  
 17  
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19  
 20 JOSETT F. WHALEN  
 21 Notary Public  
 22 MY COMMISSION EXPIRES: 5-31-2020  
 23  
 24  
 25

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary I will attach on a separate sheet of paper to the original transcript.

I hereby certify, under penalty of perjury, that I have affixed my signature hereto on the date so indicated.

DATED:

STEVE DeCASTRO

WITNESS: STEVE DeCASTRO

DATE: March 9, 2018

CASE: Tronox/National Industrialization Company/National Titanium Dioxide Company Limited/Cristal USA Inc.

Please note any errors and the corrections thereof on this errata sheet. The rules require a reason for any change or correction. It may be general, such as "to correct stenographic error" or "to clarify the record" or "to conform with the facts."

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Notice of Electronic Service

I hereby certify that on May 01, 2018, I filed an electronic copy of the foregoing Non-Party RPM's Motion and Supporting Memorandum for In Camera Treatment, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

I hereby certify that on May 01, 2018, I served via E-Service an electronic copy of the foregoing Non-Party RPM's Motion and Supporting Memorandum for In Camera Treatment, upon:

Seth Wiener  
Arnold & Porter Kaye Scholer LLP  
seth.wiener@apks.com  
Respondent

Matthew Shultz  
Arnold & Porter Kaye Scholer LLP  
matthew.shultz@apks.com  
Respondent

Albert Teng  
Arnold & Porter Kaye Scholer LLP  
albert.teng@apks.com  
Respondent

Michael Williams  
Kirkland & Ellis LLP  
michael.williams@kirkland.com  
Respondent

David Zott  
Kirkland & Ellis LLP  
dzott@kirkland.com  
Respondent

Matt Reilly  
Kirkland & Ellis LLP  
matt.reilly@kirkland.com  
Respondent

Andrew Pruitt  
Kirkland & Ellis LLP  
andrew.pruitt@kirkland.com  
Respondent

Susan Davies  
Kirkland & Ellis LLP  
susan.davies@kirkland.com  
Respondent

Michael Becker  
Kirkland & Ellis LLP  
mbecker@kirkland.com  
Respondent

Karen McCartan DeSantis  
Kirkland & Ellis LLP  
kdesantis@kirkland.com  
Respondent

Megan Wold  
Kirkland & Ellis LLP  
megan.wold@kirkland.com  
Respondent

Michael DeRita  
Kirkland & Ellis LLP  
michael.derita@kirkland.com  
Respondent

Charles Loughlin  
Attorney  
Federal Trade Commission  
cloughlin@ftc.gov  
Complaint

Cem Akleman  
Attorney  
Federal Trade Commission  
cakleman@ftc.gov  
Complaint

Thomas Brock  
Attorney  
Federal Trade Commission  
TBrock@ftc.gov  
Complaint

Krishna Cerilli  
Attorney  
Federal Trade Commission  
kcerilli@ftc.gov  
Complaint

Steven Dahm  
Attorney  
Federal Trade Commission  
sdahm@ftc.gov  
Complaint

E. Eric Elmore  
Attorney  
Federal Trade Commission  
eelmore@ftc.gov  
Complaint

Sean Hughto  
Attorney  
Federal Trade Commission

shughto@ftc.gov  
Complaint

Joonsuk Lee  
Attorney  
Federal Trade Commission  
jlee4@ftc.gov  
Complaint

Meredith Levert  
Attorney  
Federal Trade Commission  
mlevert@ftc.gov  
Complaint

Jon Nathan  
Attorney  
Federal Trade Commission  
jnathan@ftc.gov  
Complaint

James Rhilinger  
Attorney  
Federal Trade Commission  
jrhilinger@ftc.gov  
Complaint

Blake Risenmay  
Attorney  
Federal Trade Commission  
brisenmay@ftc.gov  
Complaint

Kristian Rogers  
Attorney  
Federal Trade Commission  
krogers@ftc.gov  
Complaint

Z. Lily Rudy  
Attorney  
Federal Trade Commission  
zrudy@ftc.gov  
Complaint

Robert Tovsky  
Attorney  
Federal Trade Commission  
rtovsky@ftc.gov  
Complaint

Dominic Vote  
Attorney  
Federal Trade Commission  
dvote@ftc.gov  
Complaint

Cecelia Waldeck  
Attorney

Federal Trade Commission  
cwaldeck@ftc.gov  
Complaint

Katherine Clemons  
Associate  
Arnold & Porter Kaye Scholer LLP  
katherine.clemons@arnoldporter.com  
Respondent

Eric D. Edmondson  
Attorney  
Federal Trade Commission  
eedmondson@ftc.gov  
Complaint

David Morris  
Attorney  
Federal Trade Commission  
DMORRIS1@ftc.gov  
Complaint

Zachary Avallone  
Kirkland & Ellis LLP  
zachary.avallone@kirkland.com  
Respondent

Rohan Pai  
Attorney  
Federal Trade Commission  
rpai@ftc.gov  
Complaint

Rachel Hansen  
Associate  
Kirkland & Ellis LLP  
rachel.hansen@kirkland.com  
Respondent

Peggy D. Bayer Femenella  
Attorney  
Federal Trade Commission  
pbayer@ftc.gov  
Complaint

Grace Brier  
Kirkland & Ellis LLP  
grace.brier@kirkland.com  
Respondent

**I hereby certify that on May 01, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party RPM's Motion and Supporting Memorandum for In Camera Treatment, upon:**

Seth Weiner  
Arnold & Porter Kaye Scholer LLP  
Respondent

Joonsuk Lee  
Title...

FTC  
jlee4@ftc.com  
Complaint

Richard Hamilton  
Attorney